

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES

VIRTUAL Regular Meeting v2
May 6, 2020

CALL TO ORDER

Chairman Breslin called the meeting to order at 7:31 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Chairman Breslin read the following statement:

"In accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and operational guidance documents issued by the Division of Local Government Services of the Department of Community Affairs, notice of this Special Virtual Meeting of the Zoning Board of Adjustment of the Township of Bernards by web-based platform with remote public access was posted more than 48 hours in advance on the Township website, on the outside doors of the Municipal Building, One Collyer Lane, Basking Ridge, New Jersey; was sent to the Bernardsville News, Whippany, New Jersey and the Courier News, Bridgewater, New Jersey; was also filed with the Township Clerk, all on April 29, 2020; and was mailed electronically to all those people who have requested individual notice.

The following procedure has been adopted by the Bernards Township Zoning Board of Adjustment. There will be no new cases heard after 10:00 PM and no new witnesses or testimony heard after 10:30 PM."

ROLL CALL:

Members Present: Breslin, Eorio, Genirs, Humbert, Juwana, Kraus, Pochtar, Tancredi, Zaidel
Members Absent: NONE
Also Present: Board Attorney, Steven K. Warner, Esq.; Township Planner, David Schley, PP, AICP;
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

APPROVAL OF MINUTES

[March 4, 2020 – Regular Session](#) – On motion made by Ms. Genirs and seconded by Mr. Zaidel, all eligible in favor and carried, the minutes were adopted *as amended* by Mr. Warner.

APPROVAL OF RESOLUTION

[Richter, Matthew & Lisa; ZB19-005](#); Block 1614, Lot 3; 63 Juniper Way; Bulk Variance (approved) – Mr. Zaidel moved to approve the resolution as drafted. Mr. Tancredi seconded.

Roll call: Aye: Breslin, Eorio, Genirs, Humbert, Pochtar, Tancredi, Zaidel
Nay: NONE
Ineligible: Humbert, Juwana

Motion carried.

APPROVAL OF RESOLUTION

[Buzin, Marc & Michelle; ZB20-002](#); Block 8102, Lot 11; 52 Bernard Drive; Bulk Variance (approved) – Ms. Pochtar moved to approve the resolution as drafted. Mr. Tancredi seconded.

Roll call: Aye: Breslin, Eorio, Genirs, Humbert, Pochtar, Tancredi Zaidel
Nay: NONE
Ineligible: Humbert, Juwana

Motion carried.

COMPLETENESS HEARING

Lincoln Avenue Gospel Hall; Block 8903, Lot 36; 3265 Valley Road; Preliminary/Final Site Plan, Conditional Use (d-3) Variance; #ZB20-006

Present: Frederick B. Zelley, Esq., Attorney for the Applicant

Mr. Schley and Mr. Quinn were duly sworn by Mr. Warner.

Frederick B. Zelley, Esq., attorney with *Bisogno, Loeffler & Zelley LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicant. He gave a brief summary of the application along with the waivers being sought: (1) a Letter of Interpretation issued by the NJDEP, (2) soil logs and (3) a project report/environmental impact assessment. Mr. Schley opined that the Board could grant the waiver requests for Items #1 and #3 because the scope of the project was small. In reference to Item #2, Mr. Quinn opined that some sort of soil exploration for the detention basin should be conducted however that could be listed as a condition of approval. He added that a note should be placed on the plans stating that at least one (1) soil log should be performed in the area of disturbance prior to issuing construction permits. Mr. Schley noted that waiving any of these items for completeness purposes would not preclude the Board from asking for submission of any or all of them during the hearing, if needed.

Ms. Genirs moved to grant the waivers with the stipulations made during discussions and to deem the application complete. Mr. Kraus seconded.

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| Roll call: | Aye: | Breslin, Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel |
| | Nay: | NONE |
| | Ineligible: | Humbert, Juwana |

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Hayworth, Stephen B.; Block 1511, Lot 4; 10 Depot Place; Bulk Variance; #ZB20-005

Chairman Breslin announced that the application would be carried to June 3, 2020 *with no further notice required*.

COMPLETENESS AND PUBLIC HEARING

[Muir, Nicholas & Amanda](#); Block 2904, Lot 18; 14 Forest Trail; Bulk Variances; #ZB20-003

Present: Nicholas & Amanda Muir, Applicants
Joseph M. Marchese, RA, Architect for the Applicants

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicants, Mr. Marchese and the Board's professionals were duly sworn.

Mrs. Muir stated that the application required relief for minimum side yard setback, minimum combined side yards and maximum lot coverage in order to construct a single-story garage addition and to replace an existing shed with a slightly smaller one in the same location.

Joseph M. Marchese, RA, architect with a business address of Kenvil, NJ, was accepted by the Board as an expert in the field of architecture. He testified that the proposed addition would not encroach further into the side yard setback than the existing dwelling (and the conforming kitchen addition that was under construction). He added that although the impervious coverage would still exceed the maximum allowed, by replacing the existing shed with a smaller one and by removing an existing walkway, the proposal actually decreased the coverage. Finally, he stipulated as a condition of approval, to all the comments made in both Mr. Schley's memo dated April 9, 2020 and in Mr. Quinn's memo dated April 8, 2020 and to the exterior being substantially similar to the existing dwelling. Mr. Marchese asked if construction on the proposed addition could proceed prior to receiving the memorializing resolution. Mr. Warner responded that that decision should be left to the construction department and that the Applicants would be proceeding at their own risk.

Hearing no further questions or comments from the Board, Chairman Breslin opened the hearing to the public for questions or comments. Hearing none, he closed that portion of the hearing.

After deliberating, the Board felt that the Applicants had satisfied the positive and negative criteria required for a "c(1)" or "hardship" variance for minimum side yard setback and minimum combined side yards and for a "c(2)" or "benefits outweigh detriments" variance for maximum impervious coverage. Mr. Zaidel moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the variance relief requested subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Genirs seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel
 Nay: NONE
 Ineligible: Humbert, Juwana

Motion carried.

Chairman Breslin recused himself from participating in the next application and left the building.

PUBLIC HEARING

[New York SMSA LLP d/b/a Verizon Wireless](#); Block 803, Lots 2, 3, 5, 6, and 23; 300 North Maple Avenue; Preliminary/Final Site Plan, Use (d-1) Variance, Bulk Variance; #ZB20-001 (carried from April 8, 2020)

Present: Richard L. Schneider, Esq., Attorney for the Applicant
 David K. Stern, PE, Radio Frequency Engineer for the Applicant
 Frank Colasurdo, RA, Architect for the Applicant
 Christopher Lanna, Environmental Consultant for the Applicant
 William F. Masters, Jr., PP, Planner for the Applicant
 Andrew M. Petersohn, PE, Engineer for the Applicant

Vice Chairman Zaidel announced the application. Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear the application. He added that the application had been carried from the April 8, 2020 meeting and that the Applicant had renoticed. Mr. Stern, Mr. Colasurdo, Mr. Lanna, Mr. Masters, Mr. Petersohn and the Board's professionals were duly sworn.

Richard L. Schneider, Esq., attorney with the firm of *Vogel, Chait, Collins & Schneider PC*, Morristown, NJ, entered his appearance on behalf of the Applicant. After confirming that the Board had jurisdiction to hear the case, he gave a summary of the proposed locations on the site of the six (6) test nodes which relate to the testing/research of 5G wireless communication services being conducted at the Verizon operational headquarters facility located across North Maple Avenue. He stated that bulk variance relief is required for the building height of the existing hotel/conference center (The Ridge), for minimum side yard setback for Node #15 which is to be located on an existing lamppost and for minimum setback from a residential zone also for Node #15. In addition, a d(1) variance is required since the proposed nodes are not an accessory use to the permitted principal use (conference center).

David Stern, PE, radio frequency engineer with *V-Comm LLC*, Cranbury, NJ, was accepted by the Board as an expert in the field of radio frequency engineering. He presented testimony on the background of Verizon's licensing by the Federal Communications Commission (FCC) and the evolution of the Verizon network to its current 5G status. He noted that 5G technology is particularly well suited to a "small town" or "campus" environment because, although it is much faster, the actual deployment distance is much shorter than 4G.

Mr. Stern then gave a brief overview of the application which was approved by the Planning Board months earlier for test nodes as an accessory use to the permitted principal use (scientific/research laboratory) at Verizon's headquarters located at 295 North Maple Avenue. He stated that that facility will test all aspects of 5G technology before it is released to the general public. The Ridge, as a conference center, is an extension of the Verizon headquarters and these proposed test nodes are an adjunct to the testing being performed at the headquarters.

Referring to **Exhibit A-1** (a color Google Earth aerial photo of the subject property showing the 5G coverage) and the 13-page photo simulation packet submitted by Mr. Masters in April 2020 (both posted on the Board's website),

Mr. Stern described the location of each of the six (6) nodes and the reasoning behind their placement.

Mr. Stern responded to questions from the Board concerning the various heights of the nodes and the size of the equipment. When asked why the applicant felt compelled to install the test nodes at this site since test nodes had already been approved for the headquarters site, Mr. Stern responded that The Ridge is a facility strictly for Verizon's use and that vendors, contractors, etc. are invited there to attend demonstrations, educational seminars and training sessions. He opined that since Verizon considers The Ridge an adjunct facility to its headquarters, it must have the same technology.

Vice Chairman Zaidel opened the meeting to the public for questions of the witness.

William Ratz, 27 Brentwood Court, questioned the location of the nodes and the levels of energy they emitted. He also questioned why they were being installed at The Ridge in addition to the headquarters. Mr. Stern responded with a description of the coverage areas for the nodes and the rationale for placing nodes at both The Ridge and the headquarters.

Mr. Warner noted that members of the public were posting questions in the "Chat Room" section of the Zoom meeting and advised them to join the meeting itself in order to ask them. Vice Chairman Zaidel advised that there would be a 5-minute limit for each person.

Tamara L. DeVoe, 274 North Maple Avenue questioned the locations of Node #15 and Node #16 and Mr. Stern explained the rationale for their placement.

Dr. Ratz questioned whether the nodes would be removed if the frequency was too high. Mr. Stern responded that if that occurred, measures would be taken to bring them into compliance with FCC guidelines.

Hearing no further questions, the hearing was closed for public questioning.

* * * *The Open Session was recessed at 10:09 PM and reconvened at 10:15 PM.* * * *

Andrew M. Petersohn, PE, engineer with the firm of *dBm Engineering PC*, Fairview Village, PA, was accepted by the Board as an expert in the field of radio frequency design engineering with a specialty in FCC compliance and safety. He testified that he was retained by the Applicant to analyze the proposed nodes for compliance with federal guidelines for radio frequency exposure (RFE) as outlined in the Telecommunications Act of 1996. He stated that he had personally prepared the reports for each of the nodes and described the methodology he used during his analysis, noting that he used the "worst-case scenario" exposure levels. He then reviewed each report individually and concluded by stating that all the nodes are in strict compliance with FCC guidelines. Referring to suggestions from the public that Node #15 be moved across the street and farther away from the closest residential property, Mr. Petersohn responded that the levels are already so low that, if the node was moved, any difference would be *de minimus*. He confirmed Mr. Schneider's statement that even if the antennas on Node #15 were pointed directly at the nearest residential property, the RFE levels would be less than 1% of what is considered acceptable by the FCC guidelines.

In response to Ms. Pochter's question, Mr. Petersohn opined that any physical screen to further direct the signal would be visually disruptive to the residents. He reiterated that the antennas are already highly directional and added that the calculations were done as if there was no "clutter" (existing trees, weather, etc.) which would have lowered the RFE numbers even further.

Vice Chairman Zaidel asked if 5G technology was contemplated when the 1996 FCC guidelines were created. Mr. Petersohn stated that it had and opined that this technology has received hostile reports because of the higher frequencies used and also because the nodes must be placed closer together. He added that cell towers received the same negative reaction when first introduced however none of the adverse reporting proved to be credible.

Vice Chairman Zaidel opened the hearing to the public for questions of the witness.

Ms. DeVoe asked why there were no nodes proposed for the Harding Township side of the property or on the Verizon headquarters site across the highway. Mr. Stern responded that the Applicant had gotten approval in January

2020 for 16 test nodes at the headquarters site and that nodes on the Harding side would serve no purpose.

David A. Berger, 28 Brentwood Court, asked if any additional analysis would be conducted if the direction or power output changed. At Mr. Warner's request, Mr. Schneider agreed to come up with verbiage for a condition of approval that would provide for further Board review if there was a significant change in equipment or performance.

Dr. Ratz asked if the location of Node #15 could be moved across the street and still achieve the same coverage levels. Both Mr. Petersohn and Mr. Stern agreed that there was no benefit to the radio frequency design gained by using an existing light pole for Node #15 and that the pole was utilized simply to limit any physical disturbance to the subject property which would be caused by constructing a new pole for the node. Mr. Stern testified that if the node was moved to a location across the street, the antennas would have to be pointed more towards the residential properties to achieve the same coverage.

Todd Edelstein, 172 Riverside Drive, posed questions about the location of Node #16 and how the nodes would be replaced. Mr. Petersohn responded that nodes would be replaced in their entirety, not piece by piece. Mr. Stern explained the rationale behind the placement of Node #16.

In response to a question from Mr. Berger, Mr. Petersohn offered to share links to articles about research that had been conducted on 5G technology.

Hearing no further questions, the hearing was closed to the public.

Vice Chairman Zaidel stated that the application would be carried to the May 14, 2020 meeting *with no further notice*.

COMMENTS FROM MEMBERS OR STAFF - None

ADJOURN

On motion by Ms. Pochtar, seconded by Ms. Genirs, all in favor and carried, the meeting was adjourned at 11:50 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 07/08/2020

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